

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

**KIMBERLY DOYLE, Individually and on
Behalf of All Others Similarly Situated**

PLAINTIFF

vs.

No. 6:22-cv-854

TPUSA, INC.

DEFENDANT

ORIGINAL COMPLAINT—COLLECTIVE ACTION

Plaintiff Kimberly Doyle (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her attorneys Colby Qualls and Josh Sanford of Sanford Law Firm, PLLC, for her Original Complaint—Collective Action (“Complaint”) against Defendant TPUSA, Inc. (“Defendant”), states and alleges as follows:

I. PRELIMINARY STATEMENTS

1. This is a collective action brought by Plaintiff, individually and on behalf of all others similarly situated, against Defendant for violations of the overtime provisions of the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (the “FLSA”).

2. Plaintiff seeks a declaratory judgment, monetary damages, liquidated damages, interest, and a reasonable attorney’s fee and costs as a result of Defendant’s policy and practice of failing to pay proper overtime compensation under the FLSA with in the applicable statutory limitations period.

3. Upon information and belief, within the three years prior to the filing of the Complaint, Defendant has willfully and intentionally committed violations of the FLSA as described, *infra*.

II. JURISDICTION AND VENUE

4. The United States District Court for the Western District of Texas has subject matter jurisdiction over this suit under the provisions of 28 U.S.C. § 1331 because this suit raises federal questions under the FLSA.

5. Defendant does business within the Waco District of the Western Division of Texas.

6. Venue lies properly within this Court under 28 U.S.C. § 1391(b)(1) and (c)(2), because the State of Texas has personal jurisdiction over Defendant, and Defendant therefore “resides” in Texas.

7. A substantial part of the acts complained of herein were committed in and had their principal effect against Plaintiff within the Waco Division of this District. Therefore, venue is proper pursuant to 28 U.S.C. § 1391.

III. THE PARTIES

8. Plaintiff is an individual and resident of Coryell County.

9. Defendant is a foreign, for-profit corporation.

10. Defendant’s registered agent for service of process is C T Corporation System, at 1999 Bryan Street, Suite 900, Dallas, Texas 75201.

11. Defendant does business as Teleperformance.

12. Defendant, in the course of its business, maintains a website at <https://www.teleperformance.com>.

IV. FACTUAL ALLEGATIONS

13. Defendant owns and operates telecommunications facilities in Texas.

14. During each of the three years preceding the filing of this Complaint, Defendant employed at least two individuals who were engaged in interstate commerce or in the production of goods for interstate commerce, or had employees handling, selling, or otherwise working on goods or materials that had been moved in or produced for commerce by any person.

15. Defendant's annual gross volume of sales made or business done is not less than \$500,000.00 (exclusive of excise taxes at the retail level that are separately stated) in each of the three years preceding the filing of this Complaint.

16. Defendant was Plaintiff's employer within the meaning of the FLSA, 29 U.S.C. § 203(d), and was, at all times relevant to the allegations in this Complaint, Plaintiff's employer, as well as the employer of the members of the proposed collective.

17. At all times material herein, Plaintiff has been entitled to the rights, protections, and benefits provided under the FLSA.

18. In the course of her duties, Plaintiff regularly used instrumentalities of interstate commerce such as the internet and phones.

19. Defendant employed Plaintiff from September of 2019 until June of 2022.

20. Plaintiff worked for Defendant as a Tech Support Representative in Defendant's call center.

21. Defendant also employed other employees in its call center (hereinafter, "call center employees") within the three years preceding the filing of this Complaint.

22. Plaintiff and other call center employees were primarily responsible for communicating with Defendant's customers regarding tech support issues and taking payments.

23. Defendant classified Plaintiff and other call center employees as nonexempt from the overtime requirements of the FLSA and paid them an hourly wage.

24. At all relevant times herein, Defendant directly hired hourly-paid call center employees to work on its behalf, paid them wages and benefits, controlled their work schedules, duties, protocols, applications, assignments and employment conditions, and kept at least some records regarding their employment.

25. Plaintiff and other call center employees recorded their hours worked via an electronic time clock, which logged their hours into a payroll system maintained by Defendant.

26. Plaintiff and other call center employees were unable to clock in until their computer was turned on and the systems were running.

27. Plaintiff estimates it took approximately 10 to 15 minutes to fully boot up her computer.

28. Upon information and belief, other call center employees spent a similar amount of time booting up their computer at the beginning of each shift.

29. The time Plaintiff and other call center employees spent booting up their computers went unrecorded and uncompensated.

30. Plaintiff also occasionally had computer problems which she was required to resolve with the company's IT department off the clock.

31. Plaintiffs regularly worked hours over 40 in a week.

32. Upon information and belief, other call center employees also regularly or occasionally worked hours over 40 in a week.

33. At all relevant times herein, Defendant has deprived Plaintiff and similarly situated call center employees of proper overtime compensation for all of the hours worked over forty per week.

34. Defendant knew or should have known that Plaintiff and other call center employees were not being paid properly for all hours worked.

35. Defendant knew or showed reckless disregard for whether its actions violated the FLSA.

V. REPRESENTATIVE ACTION ALLEGATIONS

36. Plaintiff brings this claim for relief for violation of the FLSA as a collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf of all persons similarly situated, and any other employees who performed the same or similar work, regardless of job title, who were, are, or will be employed by Defendant within the applicable statute of limitations period, who are entitled to payment of the following types of damages:

- A. Regular wages and overtime premiums for all hours worked over forty hours in any week;
- B. Liquidated damages; and
- C. Attorney's fees and costs.

37. Plaintiff proposes the following collective under the FLSA:

All hourly-paid call center employees in the past three years.

38. In conformity with the requirements of FLSA Section 16(b), Plaintiff has filed or will soon file a written Consent to Join this lawsuit.

39. The relevant time period dates back three years from the date on which Plaintiff's Original Complaint—Collective Action was filed herein and continues forward

through the date of judgment pursuant to 29 U.S.C. § 255(a), except as set forth herein below.

40. The members of the proposed FLSA collective are similarly situated in that they share these traits:

- A. They were paid hourly;
- B. They had substantially similar job duties and responsibilities; and
- C. They were not paid for the time it took them to boot up their computers.

41. Plaintiff is unable to state the exact number of the collective but believes that it exceeds 100 persons.

42. Defendant can readily identify the members of the collective, who are a certain portion of the current and former employees of Defendant.

43. The names and physical and mailing addresses of the probable FLSA collective action plaintiffs are available from Defendant.

44. The email addresses of many of the probable FLSA collective action plaintiffs are available from Defendant.

VI. FIRST CLAIM FOR RELIEF (Individual Claim for Violation of the FLSA)

45. Plaintiff asserts this claim for damages and declaratory relief pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*

46. At all relevant times, Defendant was Plaintiff's "employer" within the meaning of the FLSA, 29 U.S.C. § 203.

47. At all relevant times, Defendant has been, and continues to be, an enterprise engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.

48. 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay a minimum wage for all hours worked up to 40 each week and to pay 1.5x their regular wages for all hours worked over 40 each week, unless an employee meets certain exemption requirements of 29 U.S.C. § 213 and all accompanying DOL regulations.

49. During the period relevant to this lawsuit, Defendant classified Plaintiff as nonexempt from the requirements of the FLSA.

50. Despite the entitlement of Plaintiff to lawful overtime wages under the FLSA, Defendant failed to pay Plaintiff lawful overtime wages for all hours worked over forty each week.

51. Defendant failed to pay Plaintiff for all hours worked.

52. Defendant knew or should have known that its actions violated the FLSA.

53. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary, and in bad faith.

54. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA for all violations which occurred beginning at least three years preceding the filing of Plaintiff's initial complaint, plus periods of equitable tolling.

55. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and, as a result thereof, Plaintiff is entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid minimum wage and unpaid overtime premium pay described above pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

56. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff as provided by the FLSA, Plaintiff is entitled to an award of prejudgment interest at the applicable legal rate.

VII. SECOND CLAIM FOR RELIEF
(Collective Action Claim for Violation of the FLSA)

57. Plaintiff asserts this claim for damages and declaratory relief on behalf of all similarly situated employees pursuant to the FLSA, 29 U.S.C. § 201, *et seq.*

58. At all relevant times, Defendant has been, and continues to be, an “employer” of Plaintiff and all those similarly situated within the meaning of the FLSA, 29 U.S.C. § 203.

59. At all relevant times, Defendant has been, and continues to be, an enterprise engaged in commerce within the meaning of the FLSA, 29 U.S.C. § 203.

60. 29 U.S.C. §§ 206 and 207 require any enterprise engaged in commerce to pay all employees a minimum wage for all hours worked up to 40 and to pay 1.5x their regular wages for all hours worked over 40 each week, unless an employee meets certain exemption requirements of 29 U.S.C. § 213 and accompanying DOL regulations.

61. During the period relevant to this lawsuit, Defendant classified Plaintiff and others as nonexempt from the overtime provisions of the FLSA.

62. Defendant failed to pay Plaintiffs and others for all hours worked.

63. Despite the entitlement of Plaintiff and all others similarly situated to lawful overtime wages under the FLSA, Defendant failed to pay Plaintiff and all others similarly situated lawful overtime wages for all hours worked over forty each week.

64. Defendant failed to pay Plaintiff and similarly situated employees for all hours worked, including 1.5x their regular rate for all hours worked over 40 hours.

65. Defendant deprived Plaintiff and similarly situated employees of compensation for all of the hours worked over 40 per week, in violation of the FLSA.

66. Defendant knew or should have known that its actions violated the FLSA.

67. Defendant's conduct and practices, as described above, were willful, intentional, unreasonable, arbitrary, and in bad faith.

68. By reason of the unlawful acts alleged herein, Defendant is liable to Plaintiff and all similarly situated employees for monetary damages, liquidated damages and costs, including reasonable attorney's fees provided by the FLSA for all violations which occurred beginning at least three years preceding the filing of Plaintiff's initial complaint, plus periods of equitable tolling.

69. Defendant has not acted in good faith nor with reasonable grounds to believe its actions and omissions were not a violation of the FLSA, and, as a result thereof, Plaintiff and similarly situated employees are entitled to recover an award of liquidated damages in an amount equal to the amount of unpaid overtime premium pay described above pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b).

70. Alternatively, should the Court find that Defendant acted in good faith in failing to pay Plaintiff and the collective members as provided by the FLSA, they are entitled to an award of prejudgment interest at the applicable legal rate.

VIII. PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiff Kimberly Doyle, individually and on behalf of all others similarly situated, respectfully prays that Defendant be summoned to appear and to answer this Complaint and for declaratory relief and damages as follows:

- A. A declaratory judgment that Defendant's practices alleged in this Complaint violate the FLSA and its related regulations;
- B. Certification of a collective under Section 216 of the FLSA of all individuals similarly situated, as further defined in any motion for the same;
- C. Judgment for damages suffered by Plaintiff and others similarly situated for all unpaid wages under the FLSA and its related regulations;
- D. Judgment for liquidated damages owed to Plaintiff and all others similarly situated pursuant to the FLSA and its related regulations;
- E. An order directing Defendant to pay Plaintiff and all others similarly situated interest, a reasonable attorney's fee and all costs connected with this action; and
- F. Such other and further relief as this Court may deem just and proper.

Respectfully submitted,

**KIMBERLY DOYLE, Individually
and on Behalf of All Others
Similarly Situated, PLAINTIFF**

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